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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

21 Cr. 269 (CM)

5 MALIK SANCHEZ,
6 a/k/a "Smooth Sanchez,"

7 Defendant.

Sentence

8
9 New York, N.Y.
April 6, 2022
10 12:00 p.m.

11 Before:

12 HON. COLLEEN MCMAHON,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: KAYLAN E. LASKY
18 Assistant United States Attorney

19 DAVID E. PATTON

Federal Defenders of New York, Inc.
Attorney for Defendant

20 BY: CLAY H. KAMINSKY
21 Assistant Federal Defender

22 Also Present: Special Agent Ryan Symons, FBI
23
24
25

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(Case called)

MS. LASKY: Good afternoon, your Honor. Kaylan Lasky for the United States. With me is Special Agent Ryan Symons with the Federal Bureau of Investigation.

THE COURT: Good afternoon, Ms. Lasky.

MR. KAMINSKY: Good afternoon, your Honor. Clay Kaminsky from the Federal Defenders for Malik Sanchez. Also present today are his mother and several people from the Exalt Youth program.

THE COURT: Thank you.

This matter is on for sentencing under docket No. 21 Cr. 269, United States of America v. Malik Sanchez, Mr. Sanchez having been found guilty by plea to one count of false information and hoaxes, a class D felony, in violation of 18 U.S.C., Section 1038(a)(1). This crime carries a statutory maximum term of imprisonment of five years; a maximum term of three years' supervised release; a maximum fine of \$250,000; and a \$100 special assessment.

In connection with today's proceedings, I have received and reviewed the presentence report, prepared by United States Probation Officer Nichole Brown-Morin. It was filed with the Court on February 16, 2022.

I have a sentencing memorandum from the government, dated March 30, 2022. And on March 25, 2022, Wendy Olsen Clancy, the victim witness coordinator, submitted two victim

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1 impact statements in connection with this matter.

2 I have a sentencing memorandum from the Federal
3 Defenders of New York, dated March 23, 2022, together with
4 exhibits A through M, which have been supplemented this morning
5 with an exhibit N, which is a letter from something called
6 Exalt Elevating Expectations for Youth, and an exhibit O, which
7 is a letter from the Department of Education District 79
8 Pathways to Graduation, indicating that Mr. Sanchez has
9 achieved his GED.

10 I will attach that, Mr. Kaminsky, to your submission.

11 MR. KAMINSKY: Thank you, your Honor.

12 THE COURT: Is there anything else I should have
13 received in writing prior to today's proceedings?

14 From the government.

15 MS. LASKY: No, your Honor.

16 THE COURT: From the defendant.

17 MR. KAMINSKY: No, your Honor.

18 THE COURT: Has the government reviewed the
19 presentence report?

20 MS. LASKY: Yes, your Honor.

21 THE COURT: OK. Any additions, deletions or
22 corrections, other than we have to talk about the guideline
23 calculation?

24 MS. LASKY: No.

25 THE COURT: Aside from that.

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1 MS. LASKY: Aside from that, no, your Honor.

2 THE COURT: OK.

3 Can we first talk about the guideline calculation, and
4 I'll hear the government. I'd like to turn in my book to the
5 relevant section of the guidelines, whether a crime is similar
6 or not similar, and that section is somewhere in Mr. Kaminsky's
7 letter. But I, of course, have been doing other things this
8 morning and not marking up Mr. Kaminsky's letter.

9 What section is that?

10 MR. KAMINSKY: Your Honor, I believe it's 4A1.2, and I
11 believe I referred your Honor to the application notes.

12 THE COURT: Correct.

13 MR. KAMINSKY: 12.

14 THE COURT: 4A1.2. All right.

15 I would like the government to explain its position,
16 with citations to the sections and the application notes,
17 please.

18 MS. LASKY: Yes, your Honor.

19 So, the government submits that -- well --

20 THE COURT: It's a crime of disorderly conduct. OK.

21 MS. LASKY: Yes.

22 -- that the crime of disorderly conduct, your Honor,
23 is a prior offense that was similar to the instant offense.

24 THE COURT: Right. And similar how, with specific
25 citations to Section 4A1.2 and the application note.

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1 MS. LASKY: So, as to the application note -- and my
2 apologies, your Honor. I should have explained this in the --

3 THE COURT: Yes, you should have. But we're going to
4 talk about it now.

5 MS. LASKY: In the submission. But if you look at
6 their application note, your Honor --

7 THE COURT: What application note? Which one?

8 MS. LASKY: Application note 12, the one that
9 Mr. Kaminsky referred to.

10 THE COURT: OK.

11 MS. LASKY: So, that application note concerns
12 subsection (c), but the language in it refers to determining
13 whether an unlisted offense is similar to an offense listed in
14 subsection (c)(1) or (c)(2). The actual provision itself uses
15 the language "similar to" in two instances, your Honor. So if
16 you look at (c)(1), it states that sentences for the following
17 prior offenses and offenses similar to --

18 THE COURT: I'm sorry. Where is (c)(1)? There's no
19 (c)(1). What are you talking about?

20 MS. LASKY: 4A1.2.

21 THE COURT: 4A1.2. Let's go back.

22 MS. LASKY: Subsection (c)(1).

23 THE COURT: Subsection (c)(1), sentences for the
24 following prior offenses are counted only if --

25 MS. LASKY: So, your Honor, I'm looking --

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1 THE COURT: -- where the prior offense was similar to
2 an instant offense, and these are the offenses.

3 MS. LASKY: So, your Honor, I'm looking at the first
4 sentence within that subsection. It states that sentences for
5 the following prior offenses and offenses similar to them by
6 whatever name they are known are counted only if, and then --

7 THE COURT: And in subdivision (B), the prior offense
8 was similar to an instant offense, and there's a list of prior
9 offenses, one of which is disorderly conduct or disturbing the
10 peace.

11 MS. LASKY: Understood, your Honor.

12 THE COURT: It's organized via common sense approach.
13 What are the facts?

14 MS. LASKY: My point, your Honor, is that application
15 note 12, by its language, as I understand it, your Honor,
16 refers to the first "similar to" language within subsection
17 (c)(1) of 4A1.2. In other words, it is used in order to
18 determine whether an unlisted offense is similar to a listed
19 offense.

20 Application note 12, however, does not appear to
21 address whether the prior offense was similar to an instant
22 offense.

23 THE COURT: OK. So you're saying, if I could rephrase
24 it, that because disorderly conduct is a listed offense under
25 4A1.2(c)(1)(B), because it is a listed offense, application

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1 note 12(A) isn't applicable. Is that your argument?

2 MS. LASKY: Yes, your Honor. I couldn't have said it
3 better myself.

4 THE COURT: OK. Explain to me now why you consider
5 this prior conviction for disorderly conduct to be similar,
6 because I have to make a factual determination, to the crime
7 charged in this case.

8 MS. LASKY: Thank you, your Honor.

9 So, putting aside application note 12 for the time
10 being, the government considers that offense to be similar
11 because of the nature of it and the --

12 THE COURT: No, no. Tell me what the facts were.

13 MS. LASKY: Yes, your Honor.

14 THE COURT: Tell me what the underlying facts were.

15 MS. LASKY: So, in October of 2020, your Honor, the
16 defendant climbed the Queensboro Bridge while videotaping
17 himself, using a GoPro and posted it, live-streamed it to his
18 social media accounts, and during the course of that, your
19 Honor, the defendant stated comments such as I have my, quote,
20 content spray, at which time the defendant held up his canister
21 of Mace. And then the defendant can be seen on the video
22 stating: Hold on. Let's see if it falls on anyone below, and
23 then sprayed the Mace down onto the population below.

24 This offense, your Honor, from the government's
25 perspective, is very similar to the charged offense, during

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1 which the defendant committed a stunt for the purpose of a
2 social media -- for his social media account, for his
3 followers, during which he is egged on and during which he
4 essentially does conduct in order to -- to -- to harass other
5 individuals, your Honor.

6 So it is essentially for the similarity to him doing
7 that to then going and making a bomb-threat hoax, your Honor,
8 similarly which was on video, which was for the purpose of
9 harassing strangers, your Honor, that the government submits
10 that these are similar.

11 THE COURT: Thank you. OK.

12 So hoax perpetrated against strangers.

13 MS. LASKY: On video, your Honor.

14 THE COURT: On video equals similar. Right?

15 MS. LASKY: Yes, your Honor.

16 THE COURT: Fair summary? I'm just trying to distill
17 it to the essence.

18 MS. LASKY: Yes, your Honor.

19 THE COURT: OK.

20 Mr. Kaminsky, I think the government has you with
21 respect to application note 12(A), which applies to an unlisted
22 offense. Your client was convicted of disorderly conduct.
23 That's not an unlisted offense under Section 4A1.2(c)(1)(B).
24 It's not unlisted. It's right there.

25 MR. KAMINSKY: Correct, your Honor.

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1 Two thoughts on that.

2 THE COURT: Sure.

3 MR. KAMINSKY: The first is that the instant offense,
4 of course, is unlisted, so when you're comparing a listed
5 offense to an unlisted offense, including the instant offense.
6 And second of all, the guidelines in the commentary give no
7 other definition of "similar to" in this --

8 THE COURT: Correct. I'm supposed to use a common
9 sense approach. So your position is the application note
10 applies because it's this offense that's the unlisted offense.

11 MR. KAMINSKY: Right.

12 THE COURT: There's no hoax, bomb threat, or anything
13 else listed in subsection (c)(1)(B).

14 MR. KAMINSKY: Correct.

15 THE COURT: OK. So you concede that the government's
16 correct that disorderly conduct is a listed offense, but we
17 still have one listed offense and one unlisted offense.

18 MR. KAMINSKY: Exactly.

19 THE COURT: OK.

20 MR. KAMINSKY: In addition, although there are some
21 similarities, if your Honor is not applying application note
22 12, although there are some --

23 THE COURT: No, no. You've made an argument, which
24 the government will respond to, but let's assume both ways: If
25 I apply it; if I don't apply it.

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1 MR. KAMINSKY: So, if you apply it, I believe none of
2 the factors class the same way. One is a violation under New
3 York law. The other is a federal felony. The punishments are
4 vastly different. The perceived seriousness is vastly
5 different. The elements couldn't be more distinct, and the
6 level of culpability is different too. So I think, if you
7 apply application note 12, they're just not similar.

8 If you don't apply application note 12, your Honor, of
9 course, there are similarities. Mr. Sanchez was live-streaming
10 himself doing stunts. These are two of the stunts that he
11 live-streamed himself doing, but that's where the similarities
12 end. One of them is a bomb hoax at a restaurant. The other is
13 climbing the Queensboro Bridge and using pepper spray.

14 I would say they're more different than they are
15 similar.

16 THE COURT: Got it.

17 Does the government wish to address either
18 Mr. Kaminsky's argument that one of the two offenses -- that
19 being the offense of commission before this Court -- is an
20 unlisted offense and/or his argument under the application of
21 12(A)?

22 MS. LASKY: Yes, your Honor.

23 With respect to 12(A), your Honor, I do think that the
24 defense's interpretation does strain the language in the
25 provision. The provision, very, very clearly is speaking, by

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1 my reading at least, is speaking to whether the unlisted
2 offense is similar -- whether the unlisted offense has to do
3 with the --

4 THE COURT: It's perfectly clear, when you read it,
5 that the listed offenses in (c)(1)(B) are -- the prior offense
6 was similar to an instant offense. OK?

7 MS. LASKY: Yes, your Honor.

8 I mean, your Honor, by my reading, I do think that the
9 application note and the case law also supports that this is
10 really about determining whether we're talking about a prior
11 offense, your Honor.

12 THE COURT: OK. We agree that the current offense is
13 an unlisted offense.

14 MS. LASKY: Yes, your Honor.

15 THE COURT: OK. We all agree about that.

16 You say there is authority. There are cases I can
17 read, hopefully, where a court of appeal has said that the term
18 "unlisted offense" in application note 12(A) refers only to the
19 prior offense. Where is that authority?

20 MS. LASKY: Your Honor, the only authority I found on
21 this was not as satisfactory as I would like.

22 THE COURT: So there is no authority.

23 MS. LASKY: There is authority, your Honor.

24 So, in the Second Circuit, there's been a case from
25 1999 in which they did acknowledge --

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1 THE COURT: OK. What's the name of the case? Hand it
2 up to me. I'd like to read it.

3 MS. LASKY: Yes, your Honor.

4 THE COURT: You didn't bother to put this in your
5 memorandum.

6 MS. LASKY: So, your Honor, this is *United States v.*
7 *Martinez-Santos*. It's 184 F.3d 196, your Honor.

8 THE COURT: Well, we'll have to print it out.

9 MS. LASKY: The case does, your Honor -- so, it's
10 addressed in a footnote.

11 THE COURT: Oh, good. A footnote.

12 MS. LASKY: Yes, your Honor.

13 THE COURT: Second Circuit authority doesn't count if
14 it's in a footnote. Don't you know that's what the Second
15 Circuit says?

16 MS. LASKY: Well, your Honor, that's why I was about
17 to say it also states that the court may look to the
18 multifactor test, which is essentially what the court, as I
19 understand it, is doing here.

20 THE COURT: I'm trying to decide whether to look to
21 it.

22 MS. LASKY: Yes, your Honor.

23 THE COURT: I'm trying to decide how to interpret
24 this. But let's go to the multifactor test while we print this
25 out.

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1 MS. LASKY: Yes, your Honor.

2 THE COURT: The punishment for disorderly conduct,
3 which I think is a B misdemeanor, A misdemeanor --

4 MR. KAMINSKY: Not even a misdemeanor.

5 THE COURT: Not even. It's a violation.

6 MS. LASKY: Yes, your Honor.

7 THE COURT: OK.

8 And the crime here carries a statutory maximum
9 sentence of five years' imprisonment, so there's no similarity
10 between the punishments imposed for the listed and unlisted
11 offenses. The perceived seriousness of the offense is
12 indicated by the level of punishment. The perceived
13 seriousness of disorderly conduct is obviously significantly
14 less than the perceived seriousness of making a false bomb
15 threat if you look at it by the level of punishment.

16 I think you can concede that the elements of the two
17 offenses are in no way alike.

18 MS. LASKY: Agreed, your Honor.

19 THE COURT: OK.

20 His level of culpability is identical. He's the
21 perpetrator in both instances. And the degree to which the
22 commission of the offense indicates a likelihood of recurring
23 conduct, recurring criminal conduct. I don't even know what
24 that means, let alone how one would apply it.

25 MS. LASKY: Yes, your Honor.

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1 My understanding as well, your Honor, is that this is
2 not meant to be a limiting list of factors.

3 THE COURT: No. The Court is meant to use your common
4 sense.

5 MS. LASKY: Yes, your Honor.

6 THE COURT: I'm going to use my common sense. All
7 right? My common sense tells me that making a bomb threat in a
8 restaurant is so qualitatively different from a disorderly
9 conduct violation under the New York State penal code, even if
10 you videotaped yourself doing both and are under the misguided
11 impression that these are the kinds of things that should be
12 performed on videotape for the viewing public, that they are
13 not similar offenses, which makes a whopping two months' worth
14 of difference on the guidelines.

15 OK. This is a case in which -- I'm reading the
16 footnote -- there was little similarity between his five-day
17 sentence for fare beating and his seven-day sentence for
18 transfer scalping and the instant offense of illegal reentry
19 after deportation. Right?

20 MS. LASKY: Correct, your Honor.

21 THE COURT: That's the result in the case.

22 MS. LASKY: Correct, your Honor.

23 THE COURT: Fine. I'm going to go with the
24 defendant's guideline calculation.

25 OK. Does the government wish to be heard on

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1 sentencing?

2 MS. LASKY: Yes, your Honor.

3 So, the government here respectfully requests that the
4 Court impose a sentence within the guideline range here.

5 In short, Mr. Sanchez's crime was disturbing and had
6 real effects on his victims. He's been a menace to the
7 community for years, all while spouting Incel ideology, and
8 accordingly, a custodial sentence, we respectfully submit, is
9 called for here.

10 First, a guidelines sentence would reflect the
11 seriousness of the offense, promote respect for the law and
12 provide just punishment. I'd like to focus on the conduct
13 itself first, your Honor, which I understand that the Court has
14 reviewed the clip in connection with the bail.

15 THE COURT: Deeply, deeply disturbing.

16 MS. LASKY: OK, your Honor.

17 So, I won't belabor it, your Honor, but in the
18 defendant's own words, he spoke about a bomb detonation. He
19 said he was going to kill all you, I'm going to do it, I'm
20 going to bomb now, bomb now. You see certain diners run away,
21 and you see Mr. Sanchez bragging afterwards: Yo, all of them
22 scattered, etc.

23 The victim impact statements that are before the
24 Court, I believe, speak to different kinds of harms that the
25 victims have suffered here. One is that they, of course, in

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1 the moment, feared for their lives. One of the victims who was
2 with her friend reported running halfway down the block. She
3 actually moved in with her parents for several weeks after the
4 event because she thought that a terrorist was on the loose in
5 her neighborhood. And she said that she continues to feel the
6 effects of this incident to this day.

7 THE COURT: And I have no doubt that is true.

8 MS. LASKY: Another type of harm suffered here, your
9 Honor, has to do with the fact that the defendant was posting
10 this online and was doing so for his and others' own amusement.

11 As victim three wrote to the Court, your Honor, she
12 said that me and other bystanders felt that our lives were
13 threatened for entertainment, without consent. She wrote that
14 that felt abhorrent and that her privacy was also invaded that
15 day.

16 Mr. Sanchez's conduct was very serious, and his
17 conduct had real effects on real victims, and the government
18 believes that the public should know that terrorizing innocent
19 people results in serious punishment.

20 Additionally, your Honor, and as the government put in
21 its submission, this was not just a one-off, rash kind of
22 action. It appeared that the defendant was actually
23 workshopping this kind of conduct. There were other videos in
24 which the defendant stated things like -- about bomb threats or
25 in which his followers were making statements that he was

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1 playing off of with respect to bomb threats, your Honor.

2 Second, your Honor, a guideline sentence is necessary
3 to protect the public from the defendant. The conduct was
4 serious in and of itself and harmful in and of itself, but I
5 think particularly viewed within the lens of -- through the
6 lens of this defendant and his fixation with guns, the fact
7 that he was found with five magazines in his apartment after --

8 THE COURT: What am I supposed to do about his
9 subsequent rehabilitation? That's what's important for
10 protecting the public.

11 MS. LASKY: Understood, your Honor, and I think, of
12 course, that if Mr. Sanchez is making strides, of course,
13 that's extremely laudable, important for him and important for
14 the community, your Honor.

15 However, I would state, your Honor, that he
16 essentially had been doing this kind of conduct for years.
17 Excuses that I understand the defendant to be making for his
18 conduct ring hollow to some extent, your Honor, as far as, for
19 example, the bullying and the effects of the COVID-19 pandemic.
20 And your Honor, this is the first time that the defendant has
21 been under the threat of a serious federal sentence of this
22 nature, your Honor. He's never been charged federally.

23 THE COURT: Right. Their theory is that he's been
24 scared straight.

25 MS. LASKY: Right, your Honor, but he certainly has

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1 come before courts before. He has been sentenced to probation,
2 to ACD, and similar kinds of resolutions, and yet he has
3 continued undeterred to do these kind of harmful acts for the
4 community and to be a menace to the community.

5 That he has stopped doing so now for, admittedly,
6 eight or nine months, I believe, because he is under a serious,
7 lengthy potential sentence, I don't think speaks to the
8 defendant's rehabilitation to the extent that the defense
9 contends that it does, your Honor.

10 Your Honor, the other thing, I believe, and I was
11 noting this to some extent, is about the defendant's criminal
12 history here.

13 The government laid out in lengthy detail the
14 defendant's criminal history, which predated the COVID-19
15 pandemic, beginning with an armed -- or excuse me, a robbery in
16 which he held up a pretend gun several years ago and spanning
17 until he was arrested on these federal charges. He's been
18 arrested approximately seven times, five times during the six
19 months preceding his federal arrest. He's been given the
20 benefit of the doubt time and time again. His cases have
21 resolved without incarceratory sentences, and yet Mr. Sanchez
22 has remained undeterred. It's clear that those repeated
23 previous brushes with the law have not deterred him.

24 Your Honor, I would also like to note here that the
25 defendant's request for a limited term of supervised,

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1 supervision is particularly troubling to the government in
2 light of the defendant's criminal history.

3 THE COURT: What do you mean, his request for a
4 limited term of supervision?

5 MS. LASKY: Yes, a limited term, less than the maximum
6 term of supervised release is troubling to the government.

7 In light of the defendant's criminal history, I
8 believe that this defendant is a candidate for the maximum term
9 of supervised release. He could benefit certainly from having
10 supervision, as could the community, your Honor. And it's for
11 those reasons, your Honor, that the government respectfully
12 submits a guidelines sentence.

13 I would also note, your Honor, as to zone B, of
14 course, the Court may consider whatever sentence it believes is
15 appropriate here. The defense asks that because the defendant
16 served 23 days, which is nearly one month, that it would be
17 appropriate here to fashion a sentence that does not solely
18 consist of imprisonment here.

19 Your Honor, I would point the Court here to
20 application note 4 of subsection -- or, excuse me, of
21 guidelines provision 5C1.1(c).

22 THE COURT: Uh-huh.

23 MS. LASKY: And this is the application note that is
24 interpreting this provision. It states that if a defendant is
25 a nonviolent first offender in the zone B range, then the Court

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1 should consider imposing a sentence other than imprisonment, in
2 accordance with subsection (b) or (c)(3), which is at issue
3 here, and it goes on to define a nonviolent first offender as a
4 defendant who has no prior convictions or other comparable
5 judicial dispositions of any kind and who did not use a
6 credible threat of violence, for example.

7 The defendant plainly does not meet the definition of
8 a nonviolent first offender, by the government's view. Of
9 course, the Court may do whatever the Court wishes to do in
10 this respect, but I would state that I do not believe that the
11 defendant's proposed sentence here would be appropriate, your
12 Honor.

13 THE COURT: Give me one minute.

14 OK. Mr. Kaminsky, have you reviewed the presentence
15 report and gone over it with your client?

16 MR. KAMINSKY: Yes, Judge.

17 THE COURT: I think you're right about the calculation
18 of the guideline. I think the government's probably right
19 about 5C1.1, but I'll hear you on sentencing and on anything
20 that you choose to address.

21 MR. KAMINSKY: Thank you, your Honor.

22 On 5C1.1, I hadn't had the opportunity to review that
23 before today. I would just note that it's about what, in the
24 commission's view, the Court should consider. It doesn't limit
25 the Court's ability.

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1 THE COURT: Correct. My ability. I can consider
2 anything I want, and for example, what would be my options? In
3 your view, what would be my options? Forget about what you
4 want. What would be my options, other than a sentence of X
5 number of months of imprisonment. A guidelines sentence -- six
6 to 12 is the guidelines.

7 MR. KAMINSKY: I guess I'd ask your Honor to bear in
8 mind --

9 THE COURT: Take me to law school. What are my
10 options?

11 MR. KAMINSKY: Your Honor can sentence Malik to up to
12 five years in prison.

13 Sorry, your Honor.

14 THE COURT: If I was going to give a guidelines
15 sentence, can I put him on home confinement? Can I put him on
16 intermittent sentencing? Where in here are there options for
17 me?

18 MR. KAMINSKY: If you were going to give a guidelines
19 sentence, it would be under 5C1.1. And under 5C1.1(c), you're
20 in zone B of the guidelines table.

21 THE COURT: Right.

22 MR. KAMINSKY: And it says the minimum term may be
23 satisfied by, and that's not limited by --

24 THE COURT: I understand.

25 MR. KAMINSKY: -- the application note, which just

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1 talks about consideration, may be satisfied by a sentence of
2 imprisonment. Sure. A sentence of imprisonment that includes
3 a term of supervised release with the conditions of substitute
4 community confinement or home detention, provided that at least
5 one month is satisfied by imprisonment; or (c) a sentence of
6 probation that includes a condition of intermittent
7 confinement.

8 So, your Honor, under 5C1.1(c)(2), a guidelines
9 sentence in this case is one month of imprisonment and four --
10 I'm sorry, and five months of home detention.

11 Mr. Sanchez has already served 23 days of
12 imprisonment, nearly one month, and nine months of home
13 detention under very strict conditions that your Honor likened,
14 correctly, when your Honor set bail to like being imprisoned at
15 home.

16 So he's done nine months of that. He's also done
17 three months on a curfew. So he has, in my view, completed a
18 guidelines sentence.

19 Of course, your Honor's not bound by the guidelines at
20 all and can fashion an appropriate sentence under 3553(a). And
21 there, of course, the question is what sentence is sufficient
22 but not greater than necessary to achieve the purposes of
23 sentencing?

24 There --

25 Shall I continue, your Honor?

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1 THE COURT: Oh, I'm listening.

2 MR. KAMINSKY: There, your Honor, I think, should
3 consider -- I won't belabor the points that we made in our
4 letter, but Malik was 19 years old when he committed this
5 offense and even younger when he committed the other things
6 that the government talks about.

7 I'm not sure how appropriate it is to talk about a
8 robbery that was a sealed juvenile adjudication for grand
9 larceny, not for robbery. But in any event, when he committed
10 this offense, he was 19 years old, and the Supreme Court has
11 time and time again recognized that youth is important. It's
12 more than just a chronological fact. Youth is important
13 because it bespeaks immaturity, which lessens culpability, and
14 suggests that less punishment is in order, but also because it
15 talks about a capacity for change. Right? Young people have a
16 greater capacity for change.

17 And your Honor, we talked about it in our memo. It's
18 in the letters. I can say personally Malik has changed over
19 the past year -- it's been almost a year -- before my very
20 eyes; when I first met Malik, he was, as you might expect, from
21 the person who is in those videos. And now he's just brimming
22 with hope and goodwill, and he's a really warm, engaged young
23 man who has a lot of hope for the future. He has a lot of
24 different ideas about what he wants to do.

25 He was just invited by Exalt, and they're here to

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1 support him, to apply for a \$20,000 scholarship to further his
2 education. He has been previously thinking of joining the
3 military and then using the GI bill money after that to further
4 his education.

5 He has a lot of potential, and both OBT, the program
6 that helped him get his GED, which he completed in February,
7 and Exalt, which has provided for the job training, you know,
8 they love him at both places and they love him because he is
9 good to the other people there. He's kind, he's engaged, he's
10 optimistic, and he's a hard worker.

11 One of the four purposes of sentencing is
12 rehabilitation, and Malik has been rehabilitated. He's also
13 been punished, never went to jail before. He was in a federal
14 lock-up during the pandemic for three weeks -- actually, it
15 was -- sorry -- Essex County, which is no better, your Honor.

16 THE COURT: No.

17 MR. KAMINSKY: -- for more than three weeks, and he's
18 clearly been deterred as well.

19 So I'm not really sure what purpose would be served by
20 putting him back in jail for a guidelines sentence. It would
21 certainly mess up all the progress that he's made, but what
22 would be the hope. What would the Court hope to achieve in
23 doing that? Certainly, it could hope to achieve no better than
24 it's achieved through the bail conditions in this case and
25 through Malik's own hard work.

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1 I think that when your Honor considers the parsimony
2 clause of 3553(a), it's pretty clear that returning Malik to
3 the custody would not be a parsimonious sentence.

4 In terms of the fine and the supervision, we would ask
5 that your Honor not impose a fine because he doesn't have the
6 ability to pay a fine.

7 THE COURT: I don't know where that came from.

8 MR. KAMINSKY: That was probation's idea, your Honor.
9 I don't think the government even asked for it.

10 And any money that he or his family does have should
11 go to his education, in my view.

12 And in terms of the three-year term of supervised
13 release, your Honor has the ability to impose that. The
14 guidelines are one to three years. We had felt that the
15 shorter term might be appropriate because Malik won't be able
16 to go into the military while he's on supervision. That was
17 the whole thinking behind that, your Honor.

18 THE COURT: OK. Is that it for you, Mr. Kaminsky?

19 MR. KAMINSKY: Unless the Court has questions.

20 THE COURT: No. And thank you for your very fulsome
21 submission and all those letters.

22 MR. KAMINSKY: Thank you, your Honor.

23 THE COURT: Anything else from the government?

24 MS. LASKY: No, your Honor.

25 THE COURT: OK.

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1 Let me ask. Are any of the victims here?

2 MS. LASKY: No, your Honor. They did not feel
3 comfortable.

4 THE COURT: OK. I want to make it really clear that I
5 read their letters; that I've been at the wrong end of the gun,
6 so I can appreciate what it's like to be in a life-threatening
7 or what can reasonably be perceived to be a life-threatening
8 situation. I believe every word that these women said. They
9 were terrified, and they suffer to this day. It's just very,
10 very disturbing to me.

11 Mr. Sanchez, is there anything you want to say to me
12 before I sentence you?

13 You can take your mask off.

14 THE DEFENDANT: Yes, your Honor.

15 First and foremost, I would like to apologize and
16 basically apologize for all the fear that I put into those
17 women that day. And furthermore, I would like to also say that
18 I feel that I should thank you, because the behavior that I was
19 displaying was that of a -- that of an immature and reckless
20 child.

21 THE COURT: It was that of a sicko.

22 THE DEFENDANT: It was, correct. Correct, ma'am.

23 And I would like to thank you for giving me the
24 opportunity, when you didn't have to, to turn my life around
25 through this rehabilitation. And once again, to the victims,

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1 I'm sorry. And I've -- I've managed to gather up the courage
2 and -- gather up the courage and honor to pursue something that
3 I shouldn't endanger people, I shouldn't put fear in people,
4 and I should keep moving forward in my life as a young and
5 aspiring young man. And this is definitely helping me with
6 that. And I would never consider doing these actions again.
7 And I take full accountability, ma'am.

8 Thank you.

9 THE COURT: OK. Have a seat.

10 I'm just going to say that this is a hard case. It's
11 a hard case because of those two letters. It's a hard case
12 because I have to make a decision, knowing that two people's
13 lives have been impacted, that two human beings have been
14 traumatized, and that there is literally no way to undo that.
15 I hope and I pray that, with time, they will be able to come to
16 terms with what happened to them that day. But I know for a
17 fact that they'll never forget it and that there will be a
18 moment sometime in their future, when they least expect it,
19 when it will surface and bite them in the butt. I know because
20 it's happened to me. And that makes it really hard to kind of
21 let you start out with a clean slate based on what you've done
22 over the course of the last year.

23 But for the really terrifying nature of what it was
24 that you did, the first line of Mr. Kaminsky's sentencing
25 memorandum is exactly correct: "This is a pretrial success

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1 story." This is a young man who was well down a very, very,
2 very well trodden road of petty but increasingly serious
3 criminal activity, at a very young age, who managed to do
4 something that was serious enough that caused him to go federal
5 at the age of 19, at which point he was put, during the middle
6 of the Covid epidemic, into a correctional facility. That is
7 not a pleasant place, and he saw for himself what lay ahead,
8 and he was fortunate to have the Federal Defenders of New York
9 assigned to defend him, with their amazing dedication to their
10 clients and the resources that they put especially toward young
11 offenders, and something seems to have scared him straight,
12 because your actions over the course of the last year,
13 Mr. Sanchez, have been both unexpected in light of your prior
14 record and pretty remarkable.

15 I don't know what got you started down the path of
16 doing stupid, reckless, ultimately self-destructive things. It
17 certainly wasn't your family. But whatever it was, to the
18 extent that the purpose of sentencing is to effectuate the
19 defendant's rehabilitation, it appears to me that the prospect
20 of sentencing has gone a long way toward doing that.

21 What you did was a terrible thing and what you've done
22 in the past, not necessarily so terrible, but stupid, immature,
23 and criminal, would ordinarily cause me, under guideline
24 provision 5C1.1(c), which is grade B, to put you in for a month
25 and put you on five months of home confinement.

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1 Mr. Kaminsky's right. Having done 23 of those 30
2 days, it doesn't make a whole lot of sense to me to put you in
3 for a week. I think no purpose of sentencing would be served
4 by doing that.

5 So what I'm going to do is to sentence you to a term
6 of three years' supervised release. I'm sorry. It has to be
7 the maximum term of supervised release. It has to be. The
8 military, if it will take you in light of your criminal record,
9 will still be there in three years. Indeed, it is possible
10 that if things work out, probation might apply for an early
11 termination of your supervision. Might. That will depend a
12 lot on you. But I think a sentence of time served and three
13 years' supervised release, which is the sentence that the
14 probation department recommends to me, out of its vast
15 experience dealing with all manner of offenders, is, in the
16 end, the right sentence because it's the sentence that you
17 earned by your behavior over the course of the last year.

18 It's also a sentence I'm perfectly prepared to undo if
19 at any point during those three years you should do anything
20 else that's stupid or reckless or criminal.

21 For the three years that you're on supervised release,
22 you're going to have to report to a probation officer on a
23 regular basis. And you have to do everything the probation
24 officer tells you to do, and you can't do anything the
25 probation officer tells you not to do.

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1 What does that mean?

2 It means you can't commit another crime, federal,
3 state or local felony, misdemeanor, violation. I don't care
4 how serious or trivial it seems, you can't commit another
5 crime.

6 You can't get involved with controlled substances.

7 You're going to have to give a sample of your DNA,
8 your genetic identifying material, to the probation department.
9 It's going to be in criminal databases for the rest of your
10 life.

11 You have to get a job, at least 30 hours a week,
12 unless the probation officer excuses you from working.
13 Schooling, training, that's one excuse for not working, really
14 about the only one that I think matters. And it's not a
15 question of getting a job that you'd like to have. It's a
16 question of getting a job that you can get. But I've seen
17 references in these materials to training programs, and I
18 encourage you, as I know your probation officer will encourage
19 you, to take advantage of those programs, to get yourself more
20 training, to get yourself more education.

21 You must submit to one drug testing within 15 days of
22 today's date and at least two periodic drug tests thereafter,
23 as determined by the Court.

24 I notice that probation believes you pose a low risk
25 of future substance abuse, but you're young, and there are lots

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1 of temptations out there. And I just want you to understand
2 that someone will be looking over your shoulder.

3 You have to report to the probation office in this
4 courthouse within 72 hours. You can probably do that this
5 afternoon with Mr. Kaminsky, I would imagine. You will be
6 assigned a probation officer.

7 You can't knowingly leave the federal judicial
8 district where you're authorized to reside without getting
9 permission of your probation officer. Your address is in the
10 Southern District of New York, and that's where you're
11 authorized to reside. But that means you can't go to Brooklyn
12 without the permission of your probation officer or to Queens
13 without the permission of your probation officer or to New
14 Jersey without the permission of your probation officer.

15 And I know Mr. Kaminsky walked in when I was
16 sentencing someone this morning for going to Brooklyn without
17 the permission of his probation officer. So don't think it
18 won't happen.

19 Mr. Kaminsky.

20 MR. KAMINSKY: Your Honor, just until the probation
21 officer is assigned, can we grandfather in his going to OBT in
22 Brooklyn?

23 THE COURT: Oh, if OBT is in Brooklyn, then we have to
24 grandfather that in.

25 MR. KAMINSKY: Thank you, your Honor.

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1 THE COURT: Absolutely. If there are any programs
2 that he's currently involved in that are in the Eastern
3 District of New York, then he is authorized to go to those
4 programs.

5 MR. KAMINSKY: Thank you, your Honor.

6 THE COURT: I'm sure your probation officer will give
7 you permission to go to those programs, but you have to ask.
8 That was the problem with the guy this morning. He wanted to
9 go someplace, and he didn't ask. You, for the next three
10 years, have to ask.

11 You have to answer truthfully the questions that your
12 probation officer asks you, truthfully and completely. The
13 fellow I sentenced this morning, he didn't tell his probation
14 officer everything he was supposed to. He got sentenced for
15 that too, and he went to jail for that.

16 You have to live at a place that's approved by your
17 probation officer, and if you're going to change where you live
18 or anything about your living arrangement, including the people
19 that you live with, you need to clear it with your probation
20 officer before you make the change. You have to ask.

21 And if there's an emergency, there's a fire in the
22 building next door, everybody's evacuated from your building,
23 the fire department says you can't go in, you need to call your
24 probation officer within 72 hours and say: This is what
25 happened; this is why I'm not in the place where you think I'm

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1 supposed to be.

2 You have to allow the probation officer to visit you
3 at any time -- in your home or anywhere else -- and to take any
4 items that are prohibited by the conditions of your supervision
5 that are observed in plain view, like if there were a gun or
6 drugs or any kind of contraband; the probation officer could
7 pick it up and take it away.

8 As I said, you have to work full time at a lawful type
9 of employment unless you're excused from doing so, and if you
10 don't have full-time employment, you have to try to find it.

11 If you're going to change where you work or anything
12 about your work, you have to tell your probation officer in
13 advance. You have to ask permission.

14 However, if you're working in a store and they close
15 the store so that you're not working there anymore, because
16 nobody's working there, you need to tell the probation officer
17 right away, within 72 hours.

18 You can't communicate or interact with anyone who you
19 know is engaged in criminal activity. And if you know someone
20 who has been convicted of a felony, like you have, you can't
21 knowingly communicate or interact with that person unless you
22 get permission from the probation officer. You have to ask.

23 If any law enforcement officer questions you, you have
24 to notify the probation officer within 72 hours: The cops
25 stopped me and asked me blah, blah, and let me go. You have to

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1 tell the probation officer.

2 You must not own, possess, or have access to a
3 firearm, ammunition, any kind of destructive device or
4 dangerous weapon.

5 You must not act, or make any agreement with a law
6 enforcement agency to act, as a confidential human source or
7 informant without getting the permission of the Court -- not
8 even the probation officer. Me.

9 In general, you must follow all of the instructions of
10 your probation officer, and they will include the following
11 special conditions:

12 You have to participate in an outpatient mental health
13 treatment program that's approved by your probation officer.

14 And you have to continue to take any medications that
15 are prescribed by your treatment provider.

16 You have to contribute to the cost of those services
17 based on your ability to pay or the availability of insurance
18 that might cover it.

19 I authorize the release of available psychological and
20 psychiatric evaluations and reports, including the presentence
21 investigation report, to your healthcare provider.

22 You have to participate in what's called cognitive
23 behavioral treatment under the guidance and supervision of your
24 probation officer for as long as the probation officer thinks
25 you need that, up to the full three years of your term. The

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1 probation officer can release you early from that, but that's
2 for the probation officer to decide.

3 Now, because of the nature of the crime that you
4 committed, you have to permit the probation officer to install
5 an application or software that allows it -- allows
6 probation -- to survey and/or monitor all activity on any
7 computer service or connected device that you are going to use
8 during the term of your supervision or that can access the
9 internet.

10 The fellow who was here this morning didn't tell his
11 probation officer that he was using a computer at work. That
12 counts. He's doing some jail time as a result.

13 The probation office is authorized to install such
14 applications or software. Tampering with or trying to
15 circumvent probation's monitoring capabilities is prohibited.

16 The fellow this morning was interested in software
17 that would interfere with monitoring activity. That did not go
18 well for him.

19 To ensure you're compliant with the
20 computer-monitoring condition, you have to allow the probation
21 officer to conduct initial and periodic unannounced
22 examinations of any devices that are subject to monitoring.
23 You have to tell other people who use the devices that it's
24 subject to examination. So if you share a computer with other
25 people in your home, they need to know that probation might see

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1 something they're doing on the computer.

2 You have to provide to probation advance notification
3 of planned use of any devices, and you won't use any devices
4 without approval until their compatibility is determined and
5 installation is completed. Applications for your devices shall
6 be approved by the probation office once the probation office
7 ensures compatibility with the surveillance-monitoring
8 applications or software.

9 Websites, chatrooms, messaging and social-networking
10 sites shall be accessed via the device's web browser as opposed
11 to an app, unless otherwise authorized.

12 You will not create or access any internet service
13 provider account or other online service using someone else's
14 account, name, designation, or alias.

15 You will not utilize any peer to peer and/or
16 file-sharing applications without the prior approval of your
17 probation officer.

18 The use of any devices in the course of your
19 employment will be subject to monitoring or restrictions, as
20 permitted by the employer.

21 When you think about it, that's quite a punishment for
22 a young man of 20. But hopefully, it will keep you off the
23 kind of sites that got you into this pickle in the first place.
24 Just remember it's for your benefit.

25 MS. LASKY: If I may, your Honor?

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1 For clarity, the prohibition against using weapons and
2 ammunition, etc., your Honor, given the defendant's history,
3 again, just for clarity, does that include magazines as well as
4 pepper spray, your Honor?

5 THE COURT: It includes a firearm, which is a gun;
6 ammunition, which would include a magazine; a destructive
7 device or a dangerous weapon. I don't believe pepper spray
8 qualifies.

9 MS. LASKY: Thank you, your Honor.

10 THE COURT: But if the defendant uses pepper spray, he
11 will undoubtedly be guilty at the very least of the violation
12 of disorderly conduct, in which case he will have violated the
13 conditions of his supervision.

14 MS. LASKY: Understood, your Honor.

15 THE COURT: And we'll make sure probation understands
16 it too.

17 Finally, you will submit your person and any property,
18 residence, vehicle, papers, computer, other electronic
19 communication or data storage device, cloud storage or media
20 and your personal effects to a search by any United States
21 probation officer and, if needed, with the assistance of law
22 enforcement where there is reasonable suspicion that you have
23 violated a condition of your supervision or engaged in unlawful
24 conduct.

25 I just signed a three-year warrant for a search of

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1 you, your home, your devices, which are already being
2 monitored, and your personal effects, as long as your probation
3 officer has a reasonable suspicion that you're violating the
4 conditions of your release or engaging in unlawful behavior,
5 which, by the way, is a violation of the conditions of your
6 release. Your failure to submit to search is grounds for
7 revocation of release. You need to warn other people that you
8 live with or work with that the premises may be subject to
9 search pursuant to such a condition. Any search must be
10 conducted at a reasonable time and in a reasonable manner.

11 In other words, Mr. Sanchez, someone is going to be
12 looking over your shoulder for the next three years, and that's
13 appropriate given what you did.

14 It is my recommendation that the defendant be
15 supervised in the district of residence, which is the Southern
16 District of New York.

17 I am not imposing a fine. Mr. Sanchez has no ability
18 to pay a fine.

19 You are required to pay a \$100 special assessment --
20 that's court costs -- not waivable, due and payable within 30
21 days.

22 Restitution and forfeiture are not applicable in this
23 case.

24 Was there a plea agreement?

25 MS. LASKY: No, your Honor. It was a *Pimentel*.

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1 THE COURT: OK.

2 Malik Sanchez, you have a right to take an appeal from
3 the sentence that has been imposed upon you.

4 In addition, if the government believes that the
5 sentence I have imposed is unreasonable, it has the right to
6 take an appeal from the sentence.

7 In either event, if you wish to file an appeal from
8 the sentence imposed upon you or if the government decides to
9 file an appeal, you are entitled to be represented by counsel
10 and to have counsel appointed to represent you without charge
11 if you are unable to retain counsel.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Mr. Sanchez, I'm taking a chance on you.
15 It's the second time I've done that. The first time it worked
16 out pretty well, but you had today hanging over you, so you had
17 motivation. I need to make sure something's hanging over you
18 while you're on supervised release, so let me tell you what
19 happens to people who violate their supervised release in my
20 courtroom.

21 I have no tolerance, zero tolerance, for violations of
22 supervised release. You go to jail. What happened to the
23 fellow this morning, very likely that it will happen to you
24 unless you do everything your probation officer tells you to do
25 and you refrain from doing anything that your probation officer

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1 tells you not to do. And don't think that I won't do it,
2 because I will be haunted by those two ladies' letters.

3 Do you understand what I'm saying to you, sir?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: OK.

6 Anything else from the government?

7 MS. LASKY: No, your Honor. Thank you.

8 THE COURT: Thank you for the very helpful
9 presentation this morning. I appreciate it.

10 Anything else, Mr. Kaminsky?

11 MR. KAMINSKY: No, your Honor. Thank you.

12 THE COURT: Same to you.

13 I wish you the best of luck. It looks to me like you
14 have a pretty substantial community of support, quite literally
15 behind you. Don't let them down. If you don't, I actually
16 predict, Mr. Sanchez, good things for you. And I hope that
17 comes true.

18 These proceedings are closed.

19 (Adjourned)